The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kitco, Inc.

File: B-228045.2

Date: April 15, 1988

DIGEST

Request for reconsideration is denied where argument raised by protester could and should have been advanced in initial protest, and protester has presented no evidence that prior decision was based on legal or factual errors.

DECISION

Kitco, Inc., requests reconsideration of our decision in Kitco, Inc., B-228045 et al., Dec. 3, 1987, 67 Comp. Gen. ____, 87-2 CPD ¶ 540, in which we denied Kitco's protest of the award of a sole-source contract to Parker Hannifin Corporation, O-Seal Division, under Department of the Air Force request for quotations (RFQ) No. FD20600-86-59621, to supply spare seal plates for C-130 aircraft. We deny the request for reconsideration.

The Air Force, as noted in our prior decision, issued the solicitation to Hamilton Standard, the original equipment manufacturer (OEM) of seal plates previously ordered by the Air Force, and Parker Hannifin, which actually manufactured these seal plates for Hamilton. The solicitation contained the "Restrictive Acquisition Method Code" clause, stating that quotations from other sources would be considered if the source submitted prior to, or with, its quotation either: 1) evidence of having satisfactorily produced the item for the government or the prime equipment manufacturer, or 2) engineering data sufficient to show acceptability of the part.

Kitco submitted alternate quotations; it proposed to supply either the Hamilton part specified in the RFQ or a part it was in the process of developing by reverse engineering the designated part. The Air Force rejected the first alternative because the proposal did not establish that the items to be furnished in fact were OEM parts. On the other hand, the Air Force eventually found the alternate offer (after five revisions) sufficient to demonstrate the acceptability

of the design, but decided that further testing would be necessary to determine conclusively the acceptability of the actual item to be supplied. By the time the Air Force determined that first article testing would be sufficient to ensure that the government would receive acceptable parts, and thus granted formal approval of Kitco's alternate, the Air Force already had proceeded with the sole-source award to Parker Hannifin.

Kitco originally protested only the Air Force's delay in approving its alternate product, arguing that the Air Force failed to make reasonable efforts to obtain approval of Kitco's alternate part, and thus violated the statutory mandate that agencies seek offers from as many potential sources as practicable under the circumstances when an agency's need for the items is urgent. See 10 U.S.C. § 2304(e) (Supp. III 1985). Kitco also argued that the Air Force failed to provide prompt notice of the precise requirements for approval and an opportunity to have its part tested as required by 10 U.S.C. § 2319.

In denying Kitco's protest, we noted that an agency need not delay a proposed award in order to specify qualification requirements or to provide potential offerors the opportunity to meet them. 10 U.S.C. § 2319(c)(5). We also recognized that in appropriate circumstances, an agency may delay developing qualification requirements until such time as the agency receives a proposal to supply an alternate part and the technical data necessary to evaluate that alternate. Focusing on the agency's difficulties in obtaining the necessary technical data and drawings from Hamilton Standard and the agency's inability to disclose this propriety information in specifications or precise qualification requirements, we found that the record failed to establish that the Air Force reasonably could have developed precise qualification requirements in sufficient time for Kitco to compete. We also determined that since the Air Force needed to make an award to prevent depletion of its stock before first article testing of the Kitco alternate product could be completed, the award of a sole-source contract to the only known source capable and willing to provide the required seal plates was unobjectionable.

Kitco, in its reconsideration request, principally focuses upon the Air Force's rejection of its offer to supply the designated item. Notwithstanding its decision to pursue qualification of a product of its own design and manufacture, Kitco stresses that it never withdrew, modified, or negated its timely submitted offer to supply Hamilton parts. Kitco now asserts for the first time that the Air Force's rejection of this proposal for failure to contain evidence that the parts to be furnished indeed were OEM parts was

improper. Whether or not it would actually provide the OEM parts, Kitco maintains, concerns a question of contract administration, not acceptability, and thus did not provide a basis upon which to reject its offer. Kitco argues alternatively that the Air Force was required to conduct discussions with Kitco before rejecting this alternate offer.

We have consistently held that a protester may not raise in a request for reconsideration a new ground of protest that could have been raised in its original protest, as our Bid Protest Regulations do not contemplate the unwarranted piecemeal presentation of protest issues. Adrian Supply Co.--Reconsideration, B-225630.3, Aug. 7, 1987, 87-2 CPD ¶ 136. Kitco was aware when filing its initial protest that the Air Force had rejected both of its proposals, yet did not object to the rejection of its proposal to supply Hamilton Standard parts at that time. Kitco did allude to this rejection in its comments on the agency report, but even then did not vigorously challenge this action. In any case, even if we viewed the issue as having been raised in Kitco's comments, it would have been untimely, and not for consideration then or now, since Kitco's comments were not filed within 10 working days after Kitco knew of the rejection of its OEM part offer. See 4 C.F.R. § 21.2(a)(2) (1987). Moreover, had the Air Force considered Kitco's OEM part offer, the record reveals that the price quoted by Kitco for the Hamilton part was almost 300 percent greater than the price previously paid and, the Air Force states, that offer in all likelihood would have been rejected on the basis of price unreasonableness.

In its reconsideration request, Kitco also essentially reiterates its prior arguments regarding the application and effect of 10 U.S.C. § 2319. Kitco asserts that our decision misconstrues this provision and, in fact, renders it superfluous by allowing agencies to establish preaward qualification requirements without first developing the standards that potential competitors must meet in order to qualify. As noted in our prior decision, however, 10 U.S.C. § 2319 does not require an agency to delay a proposed award in order to develop and specify qualification requirements to afford potential offerors an opportunity to compete. Here, the Air Force's supply of the desired seal plates was depleted and it lacked access (until 1 month after Kitco's proposal was received) to the OEM's proprietary data necessary to develop qualification requirements, which data it could not disclose to offerors in any event. It remains our view that, considering these two factors, it was not unreasonable for the Air Force to proceed with this acquisition

without first establishing specific standards for evaluation and review of offers of alternate products.1/

As Kitco has not presented evidence that our decision was predicated on legal or factual errors, Kitco's reconsideration request is denied.

James F. Hinchman
General Counsel

1/ The development of first article tests is not covered by 10 U.S.C. § 2319; this provision only concerns requirements for testing or other quality assurance demonstrations that must be completed before the award of a contract.